

# Law and Orthodoxy under the Komnenoi

## *The Appendix to Alexios Aristenos's Canonical Commentary*

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The risk to the church, which we already fear, has touched my heart. For behold, the souls of the orthodox—especially the simpler ones—are in danger. Since the priesthood is the head of the orthodox, the whole body and all its parts are brought to good health when it is well. But if it is ill, the whole body faces complete disaster. So, behold, Christianity is now in danger, since the ecclesiastical establishment is becoming weaker, God is angered, and the evil, wicked devil who always bewitches good people is rejoicing.<sup>1</sup>

The Byzantine emperor Alexios I Komnenos (r. 1081–1118) addressed these words to Patriarch Nicholas III Grammatikos (1084–1111) in the preamble to a decree of 1092 that has come to be known as the “Edict on the Reform of the Clergy.”<sup>2</sup> The emperor’s

words convey the need for a strong institutional church (the head) to ensure the spiritual health of Christendom (the body). Alexios apparently feared that the head was growing weak and needed to be strengthened to save the souls of the orthodox from danger.

The edict is best known among scholars for its provisions relating to religious education, most notably the creation of a dedicated order of teachers (*didaskaloi*) attached to the Patriarchal Church in Constantinople.<sup>3</sup> One aspect of the decree that has received less attention than it deserves is the role of law and legal texts. Specifically, Alexios commands that the “book of the nomocanon”—the primary legal codification of the Byzantine church—should be read out in its entirety before the patriarchal synod. The hierarchs of the synod should then inform the emperor of which canons were

1 P. Gautier, ed., “L’édit d’Alexis I<sup>er</sup> Comnène sur la réforme du clergé,” *REB* 31 (1973): 179, lines 4–11: ἡψατο γὰρ τῆς καρδίας μου ὁ τῆς ἐκκλησίας ἡδὴ ὑφορώμενος κίνδυνος. ἰδοὺ γὰρ κινδυνεύουσιν αἱ ψυχαὶ τῶν ὀρθοδόξων καὶ μᾶλλον τῶν ἀπλουστέρων· ἐπεὶ κεφαλὴ τῶν ὀρθοδόξων ὁ ἱερατικός ἐστὶ σύλλογος καὶ, καλῶς μὲν ἔχοντος αὐτοῦ, ὅλον τὸ σῶμα καὶ πάντα τὰ μέρη αὐτοῦ πρὸς εὐεξίαν ἄγονται, τούτου δὲ πάλιν νοσήσαντος, καὶ τὸ σῶμα πᾶν πρὸς παντελεῖ ὀλεθρον ἀφορᾷ, ἰδοὺ τοίνυν κινδυνεύει ὁ χριστιανισμός, τῆς ἐκκλησιαστικῆς καταστάσεως ἐπὶ τὸ ἔλαττον καθεκάστην ὑποχωρούσης, καὶ Θεὸς παροργίζεται, χαίρει δὲ ὁ παμπόνηρος καὶ μισόκαλος διάβολος ὁ τοῖς ἀγαθοῖς ἀεὶ βασκαίνων. All translations, unless otherwise stated, are my own.

2 This decree was formerly dated to June 1107 on account of a scribal error (a dittography) in one of the two surviving manuscripts of the text (Venice, Biblioteca Marciana, MS gr. 49, fol. 343r). As Andreas

Schminck pointed out, the correct reading should be 1092, a date that makes better contextual sense (Schminck, “Das Prooimion der Bearbeitung des Nomokanons in 14 Titeln durch Michael und Theodoros,” *FM* 10 [1998]: 367; see also F. Dölger and P. Wirth, *Regesten der Kaiserurkunden des oströmischen Reiches von 565–1453*, vol. 2, *Regesten von 1025–1204* [Munich, 1995], 132 [no. 1168b]). For further discussion of the decree, see J. Darrouzès, *Recherches sur les Ὁφφίτια de l’église byzantine* (Paris, 1970), 72–75; P. Magdalino, “The Reform Edict of 1107,” in *Alexios I Komnenos*, ed. M. Mullett and D. Smythe (Belfast, 1996), 199–218.

3 See esp. V. Tiftixoglou, “Gruppenbildungen innerhalb des Konstantinopolitanischen Klerus während der Komnenenzeit,” *BZ* 62 (1969): 53–55; M. Angold, *Church and Society in Byzantium under the Comneni, 1081–1261* (Cambridge, 1995), 91–98; Magdalino, “Reform Edict,” 206–18.

not being properly followed “so that [our majesty] can consider with your holiness [the patriarch] what ought to be done about it.”<sup>4</sup>

In his introduction to the edict, Paul Gautier states that Alexios intended to “revise” the nomocanon by removing defunct laws,<sup>5</sup> but this is inaccurate: no canons were ever removed from the corpus. On the contrary, the emperor wanted to *reaffirm* ecclesiastical law and guarantee that it would be followed correctly in the future.<sup>6</sup> While better religious education would show the clergy and their flock what they ought to believe and how they ought to conduct themselves, the proper observation of the canons would ensure (at least in theory) that they actually did so. Canon law thus had an important role to play in Alexios’s efforts to strengthen the ecclesiastical establishment and ensure the spiritual health of orthodox Christians.<sup>7</sup>

There is a parallel between Alexios’s edict and contemporary developments in the West, where figures such as Anselm of Lucca (1036–1086), Deusdedit (d. ca. 1100), and Ivo of Chartres (ca. 1040–1115) produced revised collections of canon law designed to meet the church’s needs in an age of reform.<sup>8</sup> As

Kathleen Cushing puts it, “[Western] reformers envisaged the law as an aim, a means, and a justification of reform.”<sup>9</sup> Byzantine church reformers’ aims were obviously not identical to, nor as dramatic as, those of the eleventh-century popes. Yet we can see a similar partnership between legal scholarship and church reform in Constantinople in the same period.

The twelfth century would see the production of definitive works of canonical systematization and commentary in both the Roman and Byzantine churches: Gratian’s *Decretum* (ca. 1140) in the West, and the works of Alexios Aristenos (ca. 1130), John Zonaras (ca. 1160), and the prolific Theodore Balsamon (ca. 1170–1195) in the East.<sup>10</sup> This is no coincidence; in both cases the canonists of the twelfth century worked in intellectual and institutional contexts that emerged in the late eleventh century, building on the scholarship of that era. However, while this history is well-established in the case of the medieval West, the development of Byzantine canonical studies in the years ca. 1070–1100 is far less well understood. This haziness is due largely to the unavailability of source material, as many texts from the period either have not survived, exist only in manuscript form, or are published in outdated and inaccessible venues.

Nonetheless, some evidence for this earlier layer of canonical scholarship survives in codices from later periods. My article will focus on one particular body of texts that have been transmitted in a number of manuscripts of Alexios Aristenos’s commentary on the

4 Gautier, “L’édit d’Alexis I<sup>er</sup> Comnène,” 197, line 282: ἐπὶ τοῦτοις ἀναγνωσθήτω καὶ τὸ τοῦ νομοκάνονος βιβλίον ἅπαν ἐνώπιον τῆς ἱερᾶς καὶ ἁγίας συνόδου. . . . For an explanation of the term “nomocanon” and an account of its characteristics and development, see J. Morton, *Byzantine Religious Law in Medieval Italy* (Oxford, 2021), 17–29.

5 Gautier, “L’édit d’Alexis I<sup>er</sup> Comnène,” 196.

6 This exact suggestion can be found in a speech attributed to the late eleventh-century canonist Niketas of Ancyra, who states that “the book of the holy canons and constitutions [i.e., the nomocanon] should be presented before the synod in case any of the things written within it have become obsolete at present, so that they may be renewed” (Niketas of Ancyra, *Oration on the Ordination of Bishops*, in *Documents inédits d’ecclésiologie byzantine*, ed. J. Darrouzès [Paris, 1966], 202, lines 27–29: προτεθείσης συνοδικῶς τῆς τῶν ἱερῶν κανόνων καὶ διατάξεων βιβλίου, εἴ τινες τῶν ἐγγεγραμμένων αὐτῇ γεγονόσιν ἐξίτηλοι τῷ καιρῷ, τὴν ἀνανέωσιν δεξωνται).

7 On Alexios’s broader ecclesiastical policy, see Angold, *Church and Society*, 45–72. As several scholars have noted, Alexios’s aim was to strengthen not just Christendom but also his own authority over the church as its *epistemonarches* (overseer of discipline); see, e.g., Magdalino, “Reform Edict,” 204; G. Dagron, *Emperor and Priest: The Imperial Office in Byzantium*, trans. J. Birrell (Cambridge, 2003), 248–55.

8 See U.-R. Blumenthal, “History and Tradition in Eleventh-Century Rome,” *CHR* 79 (1993): 185–96; K. G. Cushing, *Papacy and Law in the Gregorian Revolution: The Canonistic Work of Anselm of Lucca* (Oxford, 1998); C. Rolker, *Canon Law and the Letters of Ivo of Chartres* (Cambridge, 2010).

9 Cushing, *Papacy and Law*, 143.

10 In their overview, Nicolaas van der Wal and J. H. A. Lokin refer to the twelfth century as “the great century of canon law science” in Byzantium (van der Wal and Lokin, *Historiae iuris graeco-romani delineatio: Les sources du droit byzantin de 300 à 1453* [Groningen, 1985], 107). On Gratian, see esp. A. Winroth, *The Making of Gratian’s Decretum* (Cambridge, 2004). On Theodore Balsamon, see G. P. Stevens, *De Theodoro Balsamone: Analysis operum ac mentis iuridicae* (Rome, 1969); C. Gallagher, *Church Law and Church Order in Rome and Byzantium* (Aldershot, 2002), 153–86. Alexios Aristenos and John Zonaras have yet to receive dedicated studies, but a good introduction to their work (along with that of Balsamon) can be found in S. N. Troianos, *Die Quellen des byzantinischen Rechts*, trans. D. Simon and S. Neye (Berlin, 2017), 272–96; idem, “Byzantine Canon Law from the Twelfth to the Fifteenth Centuries,” in *The History of Byzantine and Eastern Canon Law to 1500*, ed. W. Hartmann and K. Pennington (Washington, DC, 2012), 176–83. For an overview of biographical information on Alexios Aristenos, see E. Papagianni, S. N. Troianos, L. Burgmann, and K. Maksimovič, eds., *Alexios Aristenos: Kommentar zur “Synopsis canonum”* (Berlin, 2019), ix–x.

*Synopsis of Canons*, often referred to as an “appendix” to the work. Now is a particularly fitting time to look at this subject, given the publication in 2019 of a new edition of Aristenos’s commentary in the *Forschungen zur byzantinischen Rechtsgeschichte* series.<sup>11</sup> Few scholars have discussed this appendix in any detail; indeed, Aristenos’s most recent editors decided (with some justification) not to include it in their text at all.<sup>12</sup> Yet it rewards closer inspection, providing unique insight into a phase of scholarship that laid the foundations for the work of the twelfth-century canonists and showing how Byzantine churchmen of Alexios Komnenos’s reign used canon law to promote their view of religious orthodoxy. By informing the works of influential scholars of the twelfth century such as Aristenos, the anonymous figure(s) responsible for the texts in the appendix helped define the legal boundaries of institutional identity in the medieval Byzantine church.

### The *Synopsis of Canons* and Its Appendix

Unlike in western Europe, where canonists produced a profusion of different collections until Gratian’s *Decretum* finally established its dominance in the twelfth century, the Byzantines of the Komnenian era already had a preferred text of canon law. This was the *Nomocanon in Fourteen Titles* (hereafter N14T), a compilation originating in the seventh century that underwent several expansions and modifications over the years.<sup>13</sup> By the eleventh century, the most popular recension of the N14T was one attributed to the ninth-century patriarch Photios (858–867, 877–886), though this would itself be expanded in a recension of ca. 1090 by the officials Theodore the Bestes and Michael the

Sebastos.<sup>14</sup> Another difference from the Western tradition is that the Byzantines had no qualms about including both canons (*kanones*) and imperial laws (*nomoi*) in their collections (hence the term “nomocanon”). Doing so made good sense; after all, the emperors issued many laws that affected the church, so there was a practical reason to include them.

But despite its popularity, the N14T had one drawback: it was long. A typical manuscript might run to 300–400 folios, making it bulky and expensive. At an early date (perhaps even before the first recension of the N14T itself), Byzantine canonists had sought to deal with the problem of length by creating an abbreviated text of the canonical corpus known as the *Synopsis of Canons*.<sup>15</sup> By providing the reader with short summaries of the canons instead of their full content, they could compress the *Synopsis* into only thirty to forty manuscript folios. The text was updated after 692 to include the canons of the Council in Trullo, producing a version that Eleftheria Papagianni et al. refer to as the *Synopsis II*, and again in the tenth century to produce a *Synopsis III* (traditionally ascribed to Symeon the Logothete).<sup>16</sup> Oddly, the *Synopsis III* did not include post-Trullan councils like II Nicaea (787), and it does not seem to have gained widespread popularity.

The *Synopsis II* was edited again in the eleventh century to bring its contents more into line with the N14T. The conciliar canons, originally ordered according to perceived importance, were rearranged to match the chronological order of the N14T, while the canons of II Nicaea, Protodeutera (861), and Constantinople (879) were finally inserted. The first eighty-five patristic canons of St. Basil of Caesarea were also added, though

11 Papagianni et al., *Kommentar*.

12 Ibid., xviii.

13 On the “Photian” recension of the N14T, see M. M. Petrovič, *Ο Νομοκάνων εις ΙΔ' τίτλους και οι βυζαντινοί σχολιασταί: Συμβολή εις την έρευναν των θεμάτων περί σχέσεων Εκκλησίας και Πολιτείας και των επισκόπων Παλαιάς και Νέας Ρώμης* (Athens, 1970), 31–41; B. H. Stolte, “A Note on the Un-Photian Revision of the Nomocanon XIV Titulorum,” in *Analecta Atheniensia ad Ius Byzantinum Spectantia*, vol. 1, ed. S. N. Troianos (Athens, 1997), 115–30; D. Wagschal, *Law and Legality in the Greek East: The Byzantine Canonical Tradition, 381–883* (Oxford, 2015), 47. While it was the most popular canonical collection in Byzantium, it was by no means the only one; for a summary overview, see S. N. Troianos, “Byzantine Canon Law to 1100,” in *The History of Byzantine and Eastern Canon Law to 1500*, ed. W. Hartmann and K. Pennington (Washington, DC, 2012), 115–24.

14 This recension expanded the N14T by adding references to the *Basilika*, a popular codification of Byzantine civil law promulgated in 888 by Emperor Leo VI (r. 886–912) and originally known as the *Sixty Books* (it likely acquired the name *Basilika* in the eleventh century); see Schminck, “Das Prooimion” (n. 2 above), 379–83; Wagschal, *Law and Legality*, 49, 289. For a recent discussion of the *Basilika* and the debates around its date and content, see Z. Chitwood, *Byzantine Legal Culture and the Roman Legal Tradition, 867–1056* (Cambridge, 2017), 32–35.

15 On the complex textual history of the *Synopsis of Canons*, see Wagschal, *Law and Legality*, 44–45; Papagianni et al., *Kommentar*, xiii–xviii.

16 Papagianni et al., *Kommentar*, xvi–xviii. As Wagschal, *Law and Legality*, 44–45, points out, the actual process of updating the *Synopsis of Canons* was probably more complicated than this neat picture implies.

curiously the remaining nine Basilian canons and those of the other church fathers were not. What made this version of the text attractive was that it could be easily cross-referenced with the full text of the canons in the N14T; indeed, it is noteworthy that the surviving manuscripts of this version of the *Synopsis II* all also contain the ca. 1090 recension of the N14T close by.<sup>17</sup> The two texts may even have been updated at around the same time.

In the early twelfth century, the emperor John II Komnenos (r. 1118–1143) ordered Alexios Aristenos, a deacon and *nomophylax* of the Great Church of Constantinople, to create a commentary on the *Synopsis of Canons*.<sup>18</sup> He used the updated version of the *Synopsis II* as the basis of his commentary, creating the version of the text with which we are most familiar today (the so-called *versio aristenica*).<sup>19</sup> Aristenos's choice of the *Synopsis II* is testimony to the popularity that this recension must have gained in the preceding decades, no doubt because it was such a convenient companion to the N14T.

Yet the *versio aristenica* displays a curious feature that has largely escaped historians' notice: an appendix of abbreviated and excerpted texts that follows at the end of the commentary. Although it does not appear

in the 2019 edition of the work, it can be found in William Beveridge's *Synodikon* (1672) and in volume 4 of Georgios Ralles and Michael Potles' *Syntagma* (1854; hereafter cited as RP), which reprints Beveridge's text.<sup>20</sup> The only scholar to make a detailed study of the appendix in recent years is Pavlos Menevisoglou, the former Greek Orthodox Metropolitan of Sweden and current Metropolitan of Amasya. Menevisoglou provides a thorough description of the contents of the appendix, which I have taken the liberty of presenting here in an abbreviated English translation:<sup>21</sup>

- Basil of Caesarea, canons 86–92 (RP 4:257–94)
- Tarasios of Constantinople, *That Ordinations Should Not Be Purchased* (RP 4:384–85)
- Canons of Dionysios of Alexandria (RP 4:393–94)
- Canons of Peter of Alexandria (RP 4:394–95)
- Canons of Gregory of Neocaesarea (RP 4:395–96; n.b.: canon 11 is omitted and canons 1, 2, and 4 are all divided in two)
- Athanasios of Alexandria, canon 1 (RP 4:396–97)
- Maximos the Confessor, *Chapters on Love* 85 (RP 4:397)
- Athanasios of Alexandria, canon 2 (RP 4:397–98)
- Gregory of Nazianzus, canon on Holy Scripture
- Amphilochios of Iconium, canon on Holy Scripture

17 Athos, Μονή Κουτλουμουσίου, MS 42, fols. 1v–20v (eleventh century); Munich, Bayerische Staatsbibliothek, MS gr. 122, fols. 1v–22v (twelfth century); Athos, Μονή Παντοκράτορος, MS 234, fols. 288r–300r (thirteenth century). See Troianos, *Quellen*, 273.

18 The opening title of the work states that it is “a *nomokanonon* [sic] with God's aid containing a synopsis of all the canons of the holy and ecumenical seven councils, the Holy Apostles, the Great Basil, and the other God-bearing Fathers, interpreted at the command of the most august emperor, the lord John Komnenos, by the most learned deacon of the Great Church of God and *nomophylax*, the lord Alexios Aristenos” (Alexios Aristenos, *Commentary*, titl. [Papagianni et al., *Kommentar*, 1]: νομοκάνονον σὺν θεῷ περιέχον συνοπτικῶς ὅλους τοὺς κανόνας τῶν ἁγίων καὶ οἰκουμενικῶν ἐπτὰ συνόδων καὶ τῶν ἁγίων ἀποστόλων καὶ τοῦ μεγάλου Βασιλείου καὶ ἐτέρων θεοφόρων πατέρων, ἐρμηνευθὲν προτροπῇ τοῦ εὐσεβεστάτου βασιλέως κυροῦ Ἰωάννου τοῦ Κομνηνοῦ παρὰ τοῦ λογιστάτου διακόνου τῆς τοῦ Θεοῦ μεγάλης ἐκκλησίας καὶ νομοφύλακος κυροῦ Ἀλεξίου τοῦ Ἀριστηνοῦ). The office of *nomophylax* (guardian of the laws) had originally been established ca. 1047 by the emperor Constantine IX Monomachos (r. 1042–1055) as the head of legal education in Constantinople, but by the twelfth century it became primarily associated with canon law specialists in the patriarchate; see A. E. Gkoutzioukostas, *Η απονομή δικαιοσύνης στο Βυζάντιο (9ος–12ος αιώνας): Τα κοσμικά δικαιοδοτικά ὄργανα καὶ δικαστήρια τῆς πρωτεύουσας* (Thessaloniki, 2004), 208–16.

19 Troianos, *Quellen*, 271–75; Papagianni et al., *Kommentar*, xviii.

20 W. Beveridge, ed., *Συνόδικον sive Pandectae Canonum SS. Apostolorum, et conciliorum ab Ecclesia Graeca receptorum* (Oxford, 1672), publishes the appendix in a series of 27 unnumbered pages following p. 188 under the title “Synopsis of the letters of Alexios Aristenos that are said to be canonical” (*Alexii Aristini epistolarum quae dicuntur canonicae synopsis*). He begins with a note to the reader: “What follow, though perhaps not in the right order, are part of the complete *Synopsis* of Aristenos. For all those things that were missing in the manuscript that we used, as the letters faded with age and the following pages were damaged, matched [the text] in another manuscript, of which a later copy was made; we do not wish to deceive the Reader” (*Haec quae sequuntur, licet ordine non suo, Aristini Synopsin integrum exhibent. Postquam enim omnia illa, quae in Manuscripto quem secuti sumus, literis prae vetustate fugientibus, paginisque subinde laceris desiderabamus, in alio Manuscripto, cuius postea copia facta est, comparuissent, nolimus Lectorem iisdem fraudari*). Reprinted in G. A. Ralles and M. Potles, eds., *Σύνταγμα τῶν Θείων καὶ Ἱερῶν κανόνων τῶν τε Ἀγίων καὶ πανευφύμων Ἀποστόλων καὶ τῶν ἱερῶν Οἰκουμενικῶν καὶ Τοπικῶν Συνόδων καὶ τῶν κατὰ μέρος Ἀγίων Πατέρων*, 6 vols. (Athens, 1852–59), 4:393–416.

21 P. Menevisoglou, *Αἱ ἐκδόσεις τῶν ἱερῶν κανόνων κατὰ τὸν 16ον καὶ 17ον αἰῶνα (1531–1672)* (Katerini, 2007), 196–213; for the full description, see 199–211.



- Gregory of Nyssa, *Canonical Letter to Letoius* (RP 4:295–330)
- Timothy of Alexandria, canons 1–15 (RP 4:331–41)
- Canons of Theophilos of Alexandria (RP 4:342–54)
- Canons of Cyril of Alexandria (RP 4:355–62)
- Cyril of Alexandria, *Letter to Maximos the Deacon on Oikonomia* (RP 4:398)
- Cyril of Alexandria, *Letter to the Archimandrite Gennadios on Oikonomia* (RP 4:398)
- Eulogios of Alexandria, *On Oikonomia* (RP 4:398)
- Gennadios of Constantinople, *Encyclical Letter against Simony* (RP 4:374)
- Gennadios of Constantinople, *Letter to Martyrios of Antioch on the Reception of Heretics* (RP 4:398–99)
- Athanasios of Alexandria, *Letter to Bishop Rufinianus*, canon 3 (RP 4:399)
- “Seventeen ecclesiastical canons of St. Paul” (from *Apost. Const. Epit. VIII* 22.2–19: RP 4:399–401)
- “Seventeen canons of the Apostles Peter and Paul” (from *Apost. Const. Epit. VIII* 23–27: RP 4:401–2)
- “Two common canons of all the Apostles” (from *Apost. Const. Epit. VIII* 28.1, 3, 17: RP 4:402–3)
- “Chapters of the Chrysobull of Justinian for the Great Church on Fugitive Slaves” (RP 4:403–4)
- Basil of Caesarea, *On the Title and Time of Sins* (RP 4:404–5; authorship uncertain)
- Basil of Caesarea, *The Number of Types of Penances* (RP 4:405; authorship uncertain)
- Cyril of Alexandria, *Twelve Chapters against Nestorius* (*Ep.* 17 to Nestorius: RP 4:405–7)
- Metropolitan Demetrios of Kyzikos, *On the Jacobites and the Chatzitzarioi* (RP 4:407–8)
- “On the Massalians who are now Bogomils” (RP 4:408)
- Patriarch Peter III of Antioch, *Letter to Domenicus of Grado* (RP 4:408–9)
- Archbishop Leo of Bulgaria, from the first letter *On the Azymes* (RP 4:409)
- “To those who say that Rome is the first throne” (RP 4:409–15)
- Basil of Caesarea, *On Partaking in Holy Communion* (from *Ep.* 93 to the *patrikia* Kaisaria; RP 4:389)
- Basil of Caesarea, *On Those Who Transgress Penances* (RP 4:415)
- 1 Corinthians 7:39 with excerpted commentary from Theodoret of Cyrrhus and John Chrysostom (RP 4:415–16)
- “From the letter of Gennadios” (actually an excerpt from Just. *Nov.* 123.43 on those who ravish nuns: RP 4:416)
- Basil of Caesarea, *Advice to the Priest on Divine Grace* (RP 4:391–92)

Most of these entries take the form of short summaries in the same style as the rest of the *Synopsis of Canons*, though some are excerpts, amalgamations of excerpts, or even full texts. The appendix is awkwardly attached to the end of Aristenos’s work and does not bear any of his commentary, features that might lead one to suspect that it was added later. Yet the manuscript tradition tells a different story: the appendix is present in all the oldest surviving copies of the commentary from the twelfth to the thirteenth century.<sup>22</sup> It is even present in the “Nomocanon of Doxapatres,” an early thirteenth-century manuscript from southern Italy in which Aristenos’s work is wrongly attributed to the nomophylax Nicholas Doxapatres.<sup>23</sup> This codex is based on a (now lost) copy from before the year 1190 that is likely

22 Jerusalem, Πατριαρχική Βιβλιοθήκη, MS Παναγίου Τάφου 39, fols. 101r–119v ([twelfth/thirteenth] century); London, British Library, MS Egerton 2707, fols. 138r–183v (thirteenth century); Milan, Biblioteca Ambrosiana, MS L 49 sup., fols. 124r–137v (thirteenth century); Moscow, State Historical Museum, MS Sin. gr. 237, fols. 89v–102v (late twelfth century); Naples, Biblioteca Nazionale, MS II C 8, fols. 157r–169r (thirteenth century); Sinai, Μονή τῆς Ἁγίας Αἰκατερίνης, MS gr. 1641, fols. 176r–180v (thirteenth century); St. Petersburg, Russian National Library, MS gr. 208, fols. 147r–173v (twelfth/thirteenth century); Vatican City, Biblioteca Apostolica Vaticana, MSS Barb. gr. 324, fols. 2v–8v (late twelfth century; the texts themselves have been lost but are listed in the opening table of contents), and Vat. gr. 840, fols. 138v–152v (early thirteenth century). It is only in the fifteenth century that we start to see manuscripts without the appendix.

23 Vatican City, Biblioteca Apostolica Vaticana, MS Vat. gr. 2019, fols. 80r–95r (before 1234). See A. Turyn, *Codices Vaticani graeci saeculis XIII et XIV scripti annorumque notis instructi* (Vatican City, 1964), 28–34; G. Mercati, *Per la storia dei manoscritti greci di Genova, di varie badie basiliane d’Italia e di Patmo* (Vatican City, 1935), 77–79; K.-E. Zachariä von Lingenthal, “Die Synopsis canonum: Ein Beitrag zur Geschichte der Quellen des kanonischen Rechts der griechischen Kirche,” *Sitzungsberichte der Preussischen Akademie der Wissenschaften* (1887): 1159–61.

associated with Neilos Doxapatres, a Greek monk who lived in Sicily in the 1140s and may have been the same person as the nomophylax Nicholas. Its existence provides strong evidence that the appendix was present in Aristenos's work from the very beginning.

But if these texts were meant to be a part of Aristenos's work, then why did he not comment on them? Furthermore, Menevisoglou observed that the appendix seems to be haphazardly organized "without any external or internal unity."<sup>24</sup> This would surely be an uncharacteristic oversight for an erudite scholar like Aristenos who was working on the orders of the emperor. Menevisoglou hypothesizes that the appendix was originally a rough draft intended for private use, "probably created by Alexios Aristenos [himself]."<sup>25</sup> It was then presumably copied into the manuscripts of his work without polishing, either by accident or simply because he was for some reason unable to finish it.

Menevisoglou is undoubtedly correct to see the appendix as a rough draft or private collection of texts that was not intended for publication in its current form. However, there are two crucial points on which I disagree. First, it is not entirely accurate to say that there is no internal unity to the collection. It contains discernible groups of texts that *do* have a degree of coherence:

1–20: Synopses of (or excerpts from) patristic canons and letters from the N14T, with the addition of short texts by Maximos the Confessor and Eulogios of Alexandria.

21–23: Synopsis of *Epitome of the Eighth Book of the Apostolic Constitutions* 22.2–28.1, 3, 17.<sup>26</sup> The unabbreviated version of this passage appears very frequently at the beginning of manuscripts of the N14T from the tenth to the twelfth centuries.<sup>27</sup>

24 Menevisoglou, *Αἱ ἐκδόσεις*, 212.

25 Ibid., 213.

26 Text in F. X. Funk, ed., *Didascalia et Constitutiones Apostolorum*, vol. 2, *Testimonia et scripturae propinqua* (Paderborn, 1905), 85–92.

27 E.g., Athens, Μετόχιον Παναγίου Τάφου, MS 635, fols. 1v–2r (eleventh century); Florence, Biblioteca Medicea Laurenziana, MS plut. 10.10, fols. 1v–3r (eleventh century); Messina, Biblioteca Regionale Universitaria "Giacomo Longo," MS S. Salv. 59, fols. 1r–3v (early twelfth century); Naples, Biblioteca Nazionale "Vittorio Emanuele III," MS II C 4, fols. 1v–3v (eleventh/twelfth century); Oxford, Bodleian Library,

27–32: Texts on heresy and controversies with the Roman papacy. Nos. 28–31 are synopses of texts composed by prominent Byzantine churchmen during the patriarchates of Alexios Stoudites (1025–1043) and Michael Keroularios (1043–1059).

Groups 1 and 2 show a clear connection with the contents of N14T, which was evidently their source. As we saw above, the *Synopsis II* went through an incomplete process of alignment with the contents of the N14T in the eleventh century; these texts are likely associated with that process. It is unclear why these two groups were never properly integrated into the finished product—but if they had been, the *Synopsis of Canons* would have resembled the N14T much more closely than it currently does. Group 3 is united by the theme of orthodoxy and ecclesiological boundaries (to which we will return below).

Second, the appendix was probably not made by Aristenos himself but likely predates him. The presence of Groups 1 and 2 makes good sense when seen as an unfinished part of the late eleventh-century effort to bring the *Synopsis II* in line with the N14T, but less sense as an unfinished part of Aristenos's commentary. Furthermore, the latest datable texts in the appendix are to be found in Group 3 (from the 1020s to 1050s); Aristenos was working in the 1120s to 1130s and would have had access to much more recent and more fully developed texts on the same subjects (the discussion of these texts below will further corroborate this point). I am, therefore, inclined to agree with Papagianni et al., whose opinion is that the appendix was created "shortly before the beginning of the twelfth century."<sup>28</sup>

Although it is impossible to know for sure how the appendix came to be transmitted alongside Aristenos's commentary, we can sketch out a plausible hypothesis. Rather than being a private collection of draft texts created by Aristenos and then accidentally included in his commentary, the appendix was probably compiled in

MS Barocci 185, fols. 9r–11r (eleventh century); Paris, Bibliothèque nationale de France, MS gr. 1320, fols. 1r–3r (eleventh/twelfth century); Rome, Biblioteca Vallicelliana, MS C 11.1, fols. 2r–3v (early twelfth century); Sinai, Μονή τῆς Ἀγίας Αἰκατερίνης, MS 1111, fols. 1r–3r (eleventh/twelfth century); St. Petersburg, Russian National Library, MS 66+66a, fols. 2r–4r (tenth century); Venice, Biblioteca Nazionale Marciana, MS gr. 169, fols. 1r–4r (eleventh century).

28 Papagianni et al., *Kommentar*, xviii.

the last years of the eleventh century or the first years of the twelfth. It was presumably created by a redactor (or redactors) associated with the Patriarchate of Constantinople who aimed to further harmonize the *Synopsis of Canons* and the N14T.<sup>29</sup> This goal was never fully realized, but the draft texts would have been preserved at the end of a copy of the *Synopsis of Canons*.

It is important to remember that Aristenos would not have written his work exactly as it is organized today. Surviving manuscripts of the work present the canons and commentary in an integrated format: each abbreviated canon is followed immediately by Aristenos's comment under the subheading *ἐρμηνεία* (interpretation), which is then followed by the next canon and so on. Yet Aristenos would not have written all of this out himself; he would have taken the text of the *Synopsis II* (perhaps a personal copy or one belonging to the patriarchate) and composed his commentary as a separate draft. It would then have been the task of a scribe (or team of scribes) to produce a new manuscript that merged the *Synopsis II* text with Aristenos's comments into a unified whole.

As anyone who has studied medieval manuscripts will know, scribes were capable of error and occasionally copied things that they should not. It is for this reason that we sometimes see obvious mistakes being dutifully replicated by generations of copyists over hundreds of years.<sup>30</sup> If the appendix were present in the manuscript

of the *Synopsis II* used by the scribes as a prototype for a new integrated copy, they might well have failed to notice that it was not part of the main text and have erroneously included it in their finished product. If this is indeed what happened, then it was a fortunate accident, as it has preserved a fascinating intermediary stage of canonical compilation from the late eleventh century that would otherwise have been lost.

## Anti-Heretical Texts

The most interesting section of the appendix for our purposes is Group 3, whose texts can be divided into two subgroups: anti-heretical and anti-Roman. As we saw above, they mostly originated in the patriarchates of Alexios Stoudites and Michael Keroularios. Nonetheless, their arrangement in the appendix to the *Synopsis of Canons* is a product of the reign of Alexios Komnenos and reflects the concerns of the late eleventh century.

The anti-heretical texts of Group 3 begin with Cyril of Alexandria's twelve anathemas against Nestorianism from his third letter to Nestorius.<sup>31</sup> We are given a word-for-word excerpt of the anathemas, condemning beliefs such as the idea that Christ has two *hypostaseis* or that the Virgin Mary should not be called Theotokos. The anti-Nestorian anathemas are followed by a short text titled "Of Demetrios the Metropolitan of Kyzikos, on the Jacobites and Chatzitzarioi."<sup>32</sup> This is a highly abbreviated synopsis of part of a tract on heretics composed by Demetrios between 1026 and 1028, presented here in the same style as other abridgments in the *Synopsis of Canons*.<sup>33</sup> It asserts vaguely that the Jacobites

29 As Bernard Stolte has remarked, it was not unusual for the owners of legal manuscripts to add new material in an effort to keep their texts up to date. "In this sense, any legal manuscript must be assumed to contain a living text, a *texte vivant*, unless proved otherwise, and it will probably show the marks of being 'alive.' Or rather, in the same metaphorical language, it may show the marks of 'medical' treatment in order to keep it alive" (B. H. Stolte, "The Organization of Information: Observations on the Manuscripts of the Nomocanon XIV Titulorum," in *The Legacy of Bernard de Montfaucon: Three Hundred Years of Studies on Greek Handwriting: Proceedings of the Seventh International Colloquium of Greek Palaeography (Madrid-Salamanca, 15–20 September 2008)*, ed. A. Bravo García, I. Pérez Martín, and J. Signes Codoñer [Turnhout, 2010], 523).

30 In an example that I have recently come across in my own research, a group of Byzantine legal manuscripts dating from the eleventh to the fourteenth centuries all contain the same nonsense heading for a selection of canons of the Council of Carthage (419): "Title 3, Constitution 3: that it is necessary for houses in which heretics make their gatherings to be acquired by churches, of the 227 blessed fathers who gathered in Carthage" (τίτλος γ', διάταξις γ'. ὅτι χρή ταῖς ἐκκλησίαις προσκυροῦσθαι τοὺς οἴκους ἐν οἷς παρασυνάξεις ποιοῦσιν οἱ αἵρετικοὶ τοῖς [*sic*] ἐν Καρθαγένῃ συνελθόντων, κκζ' μακαρίων

πατρῶν). The text itself has nothing to do with the houses of heretics; rather, a tenth-century scribe mistook the final sentence of the previous text for a part of the next text's title. Scribes would continue to copy the mistake as late as the fourteenth century. See Morton, *Byzantine Religious Law* (n. 4 above), 81.

31 Full text in PG 77:105–21, with anathemas at 120–21.

32 RP 4:407: Δημητρίου μητροπολίτου Κυζίκου περὶ Ἰακωβιτῶν καὶ Χατζιτζαρίων. For what little is known about Demetrios of Kyzikos, see H.-G. Beck, *Kirche und theologische Literatur im Byzantinischen Reich* (Munich, 1959), 532.

33 Full text in PG 127:880–84, where it is wrongly attributed to the monk Philip the Solitary (fl. ca. 1100). For a discussion and summary of the text in German, see T. H. Benner, "Die syrisch-jakobitische Kirche unter byzantinischer Herrschaft im 10. und 11. Jahrhundert" (PhD diss., Marburg, Philipps-Universität, 1989), 123–26; see also Z. Chitwood, "The Patriarch Alexios Stoudites and the

are the same as the Monothelites or Monophysites, so named “because of a certain Jacob spreading this heresy.”<sup>34</sup> The followers of the Jacobite heresy mix the two natures of Christ together, make various errors in their liturgical rite, and even eat meat during Cheese Week. The synopsis then distinguishes the Jacobites from the Syrian Christians known as “Melkites,” noting that their name derives from the Syriac word for “emperor,” because they followed the emperor Marcian (r. 450–457) and the Council of Chalcedon.<sup>35</sup>

The short synopsis of Demetrios closes with a paragraph on a group called the “Chatzitzarioi,” explaining that “they are the ones who revere only the cross, for they call the cross *chatzi*.”<sup>36</sup> This is a reference to Armenian Christians, whom the Byzantines stereotyped as being exclusively devoted to the cross (*chatzi* being the Byzantine Greek approximation for the Armenian word for a cross, *khachkar*).<sup>37</sup> The text also notes that they reject icons, and “the Theopaschites [i.e., Monophysites] and Nestorians are [the same] in this.”<sup>38</sup>

The original text that was synopsized was produced in response to the sectarian situation in Byzantium’s Syrian and Armenian provinces in the early eleventh century. The conquests of Nikephoros II Phokas (r. 963–969), John I Tzimiskes (r. 969–976), and Basil II “the Bulgar Slayer” (r. 976–1025) brought large numbers of non-Chalcedonian Armenian and Syrian Christians under Byzantine rule, particularly in the frontier region of Melitene.<sup>39</sup> After an initial period

of tolerance under Basil II, the 1020s and 1030s saw a series of efforts by Patriarch Alexios Stoudites to implement legal restrictions on these “heretical” groups, as Zachary Chitwood has discussed.<sup>40</sup> These began with the trial and excommunication of the Syrian patriarch John VIII Bar Abdoun (1004–1033) in 1028–1029 and culminated in a decree of 1039 that prohibited non-Chalcedonian Christians from testifying against, marrying, or disinheriting members of the Byzantine communion.<sup>41</sup> While the Nestorians in the conquered lands were probably relatively few in comparison to the Monophysites, Nestorian theology was still an important touchstone in Christological debates. As Chitwood notes, “The edicts of Alexios Stoudites required a taxonomy of the beliefs of the Syrian Orthodox community and related heresies. Who were these ‘Jacobites,’ and why were they called so? Which of their beliefs were heretical? How did they differ from Nestorians?”<sup>42</sup> The need for such a taxonomy was significant enough that Alexios Stoudites included anathemas against both Jacobites and Nestorians in his updated version of the *Synodikon of Orthodoxy*.<sup>43</sup>

Immediately after the synopsis of Demetrios’s work in the appendix, we find a short text, “On the Massalians who are now Bogomils.”<sup>44</sup> After stating that the Massalians suffer from the same sickness as the

Reinterpretation of Justinianic Legislation against Heretics,” *GRBS* 54 (2014): 300–301.

34 RP 4:407: καλοῦνται δὲ Ἰακωβίται ἀπὸ τοῦ τὴν αἵρεσιν αὐτὴν πλατύναντος Ἰακώβου τινός. This was Jacob Baradaeus (ca. 500–578), founder of the Syriac Orthodox Church.

35 These are not the same “Melkites” as members of the modern Greek Catholic Church of Syria; rather, the term refers to those belonging to what we would today call the Greek Orthodox Church of Antioch. See I. Dick, *Les Melkites: Grecs-orthodoxes et Grecs-catholiques des patriarchats d’Antioche, d’Alexandrie et de Jérusalem* (Turnhout, 1994).

36 RP 4:408: Χατζιτζάριοι εἰσιν, οἱ τὸν σταυρὸν μόνον σέβοντες· χατζὶ γὰρ ὁ σταυρὸς παρ’ αὐτοῖς.

37 P. Eleuteri and A. Rigo, *Eretici, dissidenti, musulmani ed ebrei a Bisanzio: Una raccolta eresiologica del XII secolo* (Venice, 1993), 66, n. 22.

38 RP 4:408: εἰσιν ἐν ταυτῷ καὶ Θεοπασχίται καὶ Νεστοριανοί.

39 For further discussion of the consequences of these conquests for Byzantine views of Armenian and Syrian Christians, see T. M. Kolbaba, “Byzantines, Armenians, and Latins: Unleavened

Bread and Heresy in the Tenth Century,” in *Orthodox Constructions of the West*, ed. G. E. Demacopoulos and A. Papanikolaou (New York, 2013), 50–55.

40 Chitwood, “Patriarch Alexios Stoudites”; idem, *Byzantine Legal Culture* (n. 14 above), 134–42.

41 On the chronology of Alexios Stoudites’ decrees, see F. Lauritzen, “The Synods of Alexios Studites (1025–1043),” in *The Patriarchate of Constantinople in Context and Comparison: Proceedings of the International Conference Vienna, September 12th–15th 2012*, ed. C. Gastgeber, E. Mitsiou, J. Preiser-Kapeller, and V. Zervan (Vienna, 2017), 17–24.

42 Chitwood, “Patriarch Alexios Stoudites,” 300.

43 F. Lauritzen, “The Layers of Composition of the Synodikon of Alexios Studites,” *Studia Ceranea* 7 (2017): 124. Text in idem, “Synodicum Orthodoxiae Alexii Studitae,” in *The Great Councils of the Orthodox Churches: Decisions and Synodika*, vol. 1, *From Constantinople 861 to Constantinople 1872*, ed. A. Melloni (Turnhout, 2016), 389 (4.54–56). For a more general discussion of Alexios Stoudites and the *Synodikon of Orthodoxy*, see idem, “Against the Enemies of Tradition: Alexios Studites and the Synodikon of Orthodoxy,” in *Orthodoxy and Heresy in Byzantium: The Definition and the Notion of Orthodoxy and Some Other Studies on the Heresies and the Non-Christian Religions: Proceedings of the XX Annual Conference of Saint Tikhon University*, ed. A. Rigo and P. Ermilov (Rome, 2010), 41–48.

44 RP 4:408: περὶ Μασσαλιανῶν τῶν νῦν Βογομύλων.



Manichaeans (i.e., dualism), but even more severely, it goes on to describe the beliefs and practices of a dualist sect established by the tenth-century heretic Eleutherios the Paphlagonian (whom the text explicitly names).<sup>45</sup> Though the dualist mystic had died ca. 950, his followers were apparently still active in the eleventh century, leading Alexios Stoudites to issue a synodal judgment against the group.<sup>46</sup>

Antonio Rigo has previously noted a similarity between this short text and the introduction to Alexios Stoudites' decree.<sup>47</sup> In fact, a closer inspection reveals that the appendix text is a direct synopsis of the decree's opening lines. There is one important difference, though: the appendix version includes a reference, absent from Stoudites' original decree, to "Massalians *who are now Bogomils*." As Rigo points out, this is a later interpolation. He argues that the identification of the ancient Massalian heresy with the medieval Bogomils entered the mainstream of Byzantine thought only around the time of the *Dogmatic Panoply*, a detailed treatise on heresies produced by Euthymios Zigabenos for Alexios Komnenos ca. 1104.<sup>48</sup> The added reference to the Bogomils in the appendix text is a telling clue that the person who produced the synopsis was active during or after that period.

Alexios Komnenos is notorious for overseeing a parade of high-profile heresy trials in his role as *epistemonarches* of the church, and many of them are vividly narrated in Anna Komnene's *Alexiad*. Viewed in this context, each of the anti-heretical synopses in the appendix (Cyril's anathemas against Nestorius, Demetrios's tract on Jacobites and Chatzitzarioi/Armenians, and Stoudites' condemnation of Massalians/Bogomils) can be viewed as a response to a specific incident during his reign. The most famous of these was undoubtedly the trial in 1110 of Basil the Bogomil,<sup>49</sup> though he is not

the only alleged dualist heretic to appear in the *Alexiad*. Anna also mentions Theodore Blachernites, a priest of Constantinople who was accused of consorting with a group known as the "Enthusiasts" and condemned ca. 1085.<sup>50</sup> Contemporaries equated these Enthusiasts with the ancient Massalians and soon came to identify them with the Bogomils as well.<sup>51</sup>

Cyril's anathemas and Demetrios's tract likewise took on new relevance under Alexios Komnenos. Slightly before Theodore Blachernites' trial, a monk named Neilos of Calabria rose to prominence in Constantinople as a spiritual father.<sup>52</sup> According to the *Alexiad*, Neilos's main fault was his inability to understand the theological concept of the hypostatic union. He apparently advocated "an extreme Nestorian position," claiming that Christ was a human who became divine after his resurrection and denying the Virgin Mary the title of Theotokos.<sup>53</sup> His position was so extreme, in fact, that after challenging Monophysite theologians to debate, he provoked civil unrest among the capital's Armenian population. Both Neilos and the leading Armenians were brought before the patriarchal synod, and Neilos's teachings were anathematized.

The presence of Cyril's and Demetrios's texts alongside each other in the appendix seems to be a specific response to the trial of Neilos and the Armenian theologians before the synod in the 1080s. It is surely no coincidence that they are followed by the synopsis of Alexios Stoudites on the Massalians, just as the trial of Neilos was followed by that of Theodore Blachernites the Enthusiast. It is worth noting that these heresy trials took place only a few years before the revision of the N14T with which the appendix texts of Groups 1 and 2 were associated. We see a similar picture when we turn to the remaining texts of Group 3.

45 On Eleutherios the Paphlagonian, see K. Fitschen, *Messalianismus und Antimessalianismus: Ein Beispiel ostkirchlicher Ketzergeschichte* (Göttingen, 1998), 321–23. On the term "Massalian," see H. Kusabu, "Heresiological Labeling in Ecumenical Networking from the Ninth to Thirteenth Centuries: The Byzantine Oikoumene Reconsidered," *Asian Review of World Histories* 4.2 (2016): 220–21.

46 J. Gouillard, "Quatre procès de mystiques à Byzance (vers 960–1143): Inspiration et autorité," *REB* 36 (1978): 46, lines 15–50.

47 A. Rigo, "Messalianismo = Bogomilismo: Un'equazione dell'eresiologia medievale bizantina," *OCP* 56 (1990): 60.

48 Ibid., 61, 68.

49 Anna Komnene, *Alexiad* 15.8–10.

50 Ibid., 10.1.6. See also Darrouzès, *Documents inédits* (n. 7 above), 304, lines 25–27.

51 Rigo, "Messalianismo = Bogomilismo," 63–66; Kusabu, "Heresiological Labeling," 221.

52 Anna Komnene, *Alexiad* 10.1.1–5.

53 Angold, *Church and Society* (n. 3 above), 477. A more detailed account of Neilos's alleged heresy was added to the *Synodikon of Orthodoxy*, for which see J. Gouillard, "Le Synodikon de l'orthodoxie: Édition et commentaire," *TM* 2 (1967): 60–67.

## Anti-Roman Texts

The second half of Group 3 consists of synopses of texts that directly criticize the Roman church, with a particular focus on the idea of papal primacy. The first two of these date to the 1050s and relate to the confrontation between Patriarch Michael Keroularios and Cardinal Humbert of Silva Candida (ca. 1000–1061) during the “Schism” of 1054.<sup>54</sup> After the tract on “the Massalians who are now Bogomils” comes a piece titled “[A letter] of Peter of Antioch to the [bishop] of Venice. This was in the time of the patriarch lord Alexios.”<sup>55</sup> As Menevisoglou has noted, the redactor made a chronological error: the text is a short synopsis of two sections of a letter sent by the Greek patriarch Peter III of Antioch (1052–1056) to Patriarch Domenicus of Grado in the early 1050s, which was actually during the patriarchate of Michael Keroularios.<sup>56</sup>

The first section of the synopsis explains the Byzantine theory of the pentarchy, including Peter’s comparison of the five patriarchs to the five senses of the human body.<sup>57</sup> The second discusses the Eucharistic host, explaining that the Byzantine church uses leavened bread to represent the grace of the living Christ and the New Testament era. By contrast, the unleavened bread (*azyma*) of the Latins come from the Old Testament era and signifies the “legal” (i.e., Jewish) Pascha.

The theme of *azyma* as a Jewish custom is taken up more explicitly in the next text, “Of Archbishop Leo of Bulgaria, from the three letters on the *azyma*. From the first.”<sup>58</sup> This consists of a very brief synopsis of a few lines from Archbishop Leo of Ohrid’s 1053

letter to John of Trani (which precipitated the events of 1054): “Those who observe the Sabbath with *azyma*, saying that they are Christians, are neither Jews nor Christians. They are like the skin of the leopard, as Basil the Great says, whose hair is neither completely black nor completely white.”<sup>59</sup> Byzantine polemical literature of the eleventh and twelfth centuries against both Latin and Armenian Christians is replete with such unfavorable comparisons to Jewish practice, and the accusation of “Judaizing” became a staple of the genre.<sup>60</sup>

The last anti-Roman tract in Group 3, an extended refutation of papal primacy under the title “To those who say that Rome is the first throne,” is particularly intriguing.<sup>61</sup> Unlike the others in the appendix, this piece does not appear to be a synopsis. Moreover, the manuscripts do not contain any attribution; the text cannot be identified with any known author or work. Though often attributed to the ninth-century patriarch Photios, this idea was persuasively challenged by the Jesuit scholar Mauricius Gordillo, who pointed out that no extant manuscript ascribes the work to Photios and that it actually contradicts the patriarch’s writings in some places.<sup>62</sup>

54 As many scholars have established, the significance of this event has been greatly overstated in the popular imagination; see, e.g., A. Bayer, *Spaltung der Christenheit: Das sogenannte Morgenländische Schisma von 1054* (Cologne, 2002); E. Sicienski, *The Papacy and the Orthodox: Sources and History of a Debate* (Oxford, 2017), 240–81.

55 RP 4:408: Πέτρου Ἀντιοχείας πρὸς τὸν Βενετίας· γέγονε δὲ γ’ οὗτος ἐπὶ τοῦ πατριάρχου κυροῦ Ἀλεξίου.

56 Menevisoglou, *AI ἐκδόσεις* (n. 21 above), 207, n. 93. Text in C. Will, ed., *Acta et scripta quae de controversiis ecclesiae graecae et latinae seculo undemico composita extant* (Leipzig, 1861), 208–28; PG 120:756–81. The specific sections summarized in the synopsis are Will, *Acta et scripta*, 211, lines 1–7, 17–20; 214, lines 26–36; 217, lines 3–16; 219, lines 1–3, 16–20.

57 On the Byzantine concept of the pentarchy, see M. V. Anastos, *Aspects of the Mind of Byzantium: Political Theory, Theology, and Ecclesiastical Relations with the See of Rome* (Aldershot, 2001), 55–59.

58 RP 4:409: ἐκ τῶν τριῶν ἐπιστολῶν τῶν περὶ ἄζυμων. ἀπὸ τῆς α’.

59 RP 4:409: οἱ τὰ σάββατα μετὰ τῶν ἄζυμων φθλάττοντες, Χριστιανοὶ εἶναι λέγοντες, οὔτε Ἰουδαῖοι οὔτε Χριστιανοὶ εἰσιν, ὅμοιοι ὄντες δορᾷ παρδάλειος, ὡς ὁ μέγας λέγει Βασιλείος, ἧς ἡ θρίξ οὔτε μελαιναῖα ἐστὶν οὔτε διόλου λευκή. This is a synopsis of Leo of Ohrid, *Three Letters on the Azyma* 1.94–97 (E. Büttner, ed., *Erzbischof Leon von Ohrid (1037–1056): Leben und Werk (mit den Texten seiner bisher unedierten asketischen Schrift und seiner drei Briefe an den Papst)* [Bamberg, 2007], 186).

60 On Byzantine criticism of Latin *azyma* and accusations of “Judaizing,” see T. M. Kolbaba, *The Byzantine Lists: Errors of the Latins* (Urbana, 2000), 37–39; eadem, “Byzantines, Armenians, and Latins” (n. 39 above).

61 A critical edition of the text can be found in M. Gordillo, “Photius et Primatus Romanus: Num Photius habendus sit auctor opusculi Πρὸς τοὺς λέγοντας ὡς ἡ Ῥώμη θρόνος πρῶτος?,” *OCP* 6 (1940): 11–17.

62 Ibid., 21–39. For the attribution of the work to Photios, see F. Fontani, *Novae eruditorum deliciae seu veterum Aνεκδότων opusculorum collectanea* (Florence, 1785), 1.2.79–80; I. N. Valetta, *Φωτίου τοῦ σοφωτάτου καὶ ἀγιωτάτου πατριάρχου Κωνσταντινουπόλεως Ἐπιστολαὶ* (London, 1864), 567–71; J. Hergenröther, *Photius, Patriarch von Constantinopel: Sein Leben, seine Schriften und das griechische Schisma*, vol. 3 (Regensburg, 1869), 170–72; M. Jugie, *Photius et la Primauté de Saint Pierre et du Pape* (Rome, 1921), 9. Not all scholars accepted Gordillo’s argument; Franz Dölger (review of “Photius et primatus romanus,” by M. Gordillo, *BZ* [1940]: 522–25) rejected his reasoning and Beck, *Kirche und theologische Literatur* (n. 32 above), 522, followed Dölger. On the other hand, Francis Dvornik wholeheartedly

The contents of “To those who say” can be grouped into five main sections:

- §§1–6: Refutation of Petrine arguments for papal primacy.
- §§7–10: Refutation of papal primacy from the history of the first four ecumenical councils.
- §§11–16: Refutation of the idea that canon 5 of the Council of Sardica (ca. 343) gives the pope the right to judge legal appeals from other patriarchs’ jurisdictions.
- §§17–25: Historical examples demonstrating that popes had not previously exercised authority over the whole church.
- §§26–28: Assorted observations on the Roman church’s defense of fasting on Saturdays.

Gordillo identified two distinct recensions of this text, which he called  $\alpha$  and  $\beta$ , in surviving manuscripts.<sup>63</sup> The textual differences between the two recensions are quite minor, consisting of slightly different phraseology and word choice in a few places. However, there is an important contextual detail about the two recensions that escaped Gordillo’s notice: the manuscripts of Recension  $\alpha$  are all copies of Aristenos’s commentary on the *Synopsis of Canons*, while manuscripts of Recension  $\beta$  are all unabridged nomocanons. To the best of my knowledge, the work has not been transmitted in any nonlegal manuscripts. “To those who say” was clearly of primary interest to Byzantine canonists, and it is easy to see why: not only does it address issues of patriarchal jurisdiction, but legal history and canonical

supported Gordillo, noting that the text contains “many . . . statements and assertions which are obviously at odds with the situation in Byzantium and with Byzantine thinking in Photius’ time” (Dvornik, *The Idea of Apostolicity in Byzantium and the Legend of the Apostle Andrew* [Cambridge, 1958], 253). For his part, Gordillo attributed the tract to Nicholas Mesarites in the early thirteenth century, though this attribution cannot be accurate as the appendix to the *Synopsis of Canons* predates Mesarites.

63 Gordillo, “Photius et Primatus Romanus,” 10. Recension  $\alpha$ : Milan, Biblioteca Ambrosiana, MS L 49 sup., fols. 134r–137r (thirteenth century); Oxford, Bodleian Library, MS Barocci 221 (fourteenth century) (the relevant folios have been lost since Beveridge used this for his text). Recension  $\beta$ : Milan, Biblioteca Ambrosiana, MS Q 76 sup., fols. 392r–393v (a. 1288); Vatican City, Biblioteca Apostolica Vaticana, MSS Vat. gr. 829, fols. 157v–159v (fourteenth century), and Vat. gr. 1150, fols. 101v–106v (sixteenth century).

interpretation play a prominent role in sections 7–16. Indeed, the author was most likely a canonist himself (or at least familiar with canon law), as he shows an unusual degree of knowledge about the first four ecumenical councils and the canons of Sardica and Carthage.

Rather than being a coherent treatise, the text as it has been transmitted reads more like a set of debate notes or talking points: most paragraphs are dedicated to rebutting a specific proposition, and few have any connection to those that precede or follow them. It is also highly formulaic—the first six paragraphs take the form of detached “if  $x$ , then  $y$ ” statements—though the text occasionally becomes more direct in places. The fifth paragraph, for instance, begins: “If you bring me the ‘You are Peter and on this rock I shall build my church’ and the rest, you should know that it is not talking about the church in Rome. Begone!”<sup>64</sup> Similarly, the eleventh paragraph starts: “If you say that [the Council of] Sardica orders that the bishop of Rome should examine the judgments of other bishops, this can be disproven in many ways.”<sup>65</sup>

“To those who say” was probably never intended to be read as a polished work of literature. Instead, it provides a set of prepackaged arguments against Roman primacy, intended for readers with a particular (though not exclusive) interest in canon law. It is hard to say exactly when the tract was first composed, but the confrontation between Rome and Constantinople in the 1050s provides the most likely terminus post quem, while Aristenos’s commentary of ca. 1130 provides a definitive terminus ante. The most likely date is the second half of the eleventh century.

Just as can be done for the anti-heretical items in Group 3, we can point to a specific incident in the reign of Alexios Komnenos that probably inspired the addition of the anti-Roman texts to the appendix. In 1089 the patriarchal synod entered into correspondence with Pope Urban II (1088–1099), with a view to normalizing relations between Rome and Constantinople after the hostility caused by the Norman conquest of southern

64 Gordillo, “Photius et Primatus Romanus,” 11, lines 20–22: εἰ δὲ προφέρεις μοι τὸ “σὺ εἰ Πέτρος καὶ ἐπὶ ταύτῃ πέτρᾳ οἰκοδομήσω μου τὴν ἐκκλησίαν” καὶ τὰ ἐξῆς, ἴσθι ὡς οὐ διὰ τὴν ἐν Ῥώμῃ εἴρηται ἐκκλησίαν ἅπαγε. The subject, the author explains, is actually Peter’s confession of faith in Christ, in which the whole church shares.

65 Ibid., 14, lines 11–12: εἰ δὲ λέγεις ὅτι ἡ ἐν Σαρδικῇ διατάσσεται τὸν Ῥώμης ἐξετάζειν τὰς τῶν ἐτέρων ἐπισκόπων ψήφους, πολλαχόθεν ἔχει τὸ εὐκατάλυτον.

Italy in the 1050s to 1070s.<sup>66</sup> The discussions were precipitated in 1088 when Urban, recently enthroned as pope, sent to Patriarch Symeon II of Jerusalem (late 1080s–1099) a systatic letter in which he apparently “reminded” Symeon of his loyalty to the throne of St. Peter. Symeon then wrote to Patriarch Nicholas Grammatikos of Constantinople to ask his opinion. While Urban’s and Symeon’s letters have not survived, we get a sense of their content from Nicholas’s reply to Symeon:

This is my response to each of the arguments that the pope has posed in his letter to you to justify his view, replying to the same things that the pope says to you (if he says it to you, he also says it to me, just as if he says it to me, he also says it to you), as he tries to prove through scriptural arguments that there must be one head for the whole church, or the body. And [he claims] that this is none other than Peter, and through him, or even after him, the pope of Rome.<sup>67</sup>

Nicholas was unimpressed by the pope’s claims, pointing out that Christ, not Peter, is the head of the church. He also invokes the concept of the church as a body with five senses (the pentarchy):

One would also see, if one were to think about it, that the five governments of the churches hold sway over the body of the church on account of senses. If there are five senses (and no more or less), and Rome is the head of the church, not Christ, then it must mean one of two things. Either the body is mutilated, with one sense destroyed, having four instead of five,

or they should give the body another, so that it can be whole.<sup>68</sup>

Compare this sentiment with that in the version of Peter III’s letter to Domenicus in the appendix to the *Synopsis of Canons*: “Just as our body is governed by five senses, so the body of Christ, the church of the faithful, is governed by five senses, the five [patriarchal] thrones.”<sup>69</sup>

Urban followed his letter to Symeon with an approach to Alexios Komnenos, who saw the strategic advantages in having better relations with western Europe.<sup>70</sup> Alexios convened the patriarchal synod and managed to persuade Nicholas to adopt a more open-minded approach to the Roman church. But while the patriarch was willing to countenance better relations with the West, he refused to accept the principle of papal primacy. Furthermore, it is clear from other contemporary evidence that there was great resistance in some parts of the Byzantine church to closer relations with Rome. Even Theophylact of Ohrid (ca. 1055–1107), one of the most conciliatory writers of the time, acknowledges “the many errors of the Latins regarding ecclesiastical matters . . . [that] have contributed in no small degree to dividing the churches.”<sup>71</sup>

The subject matter of the appendix’s anti-Roman texts clearly corresponds to that of Nicholas’s letter to

66 On the Norman conquest and its consequences for ecclesiastical relations, see H. Chadwick, *East and West: The Making of a Rift in the Church from Apostolic Times until the Council of Florence* (Oxford, 2003), 200–205.

67 A. S. Pavlov, ed., *Kritičeskie opyty po istorij drevniešej greko-russkoj polemiki protiv latinian* (St. Petersburg, 1878), 163–64: λέγεται δὲ ταῦτα καὶ νῦν ἐκάστῳ τῶν εἰς δικαιολογίαν προτεινομένων τῷ πάπῳ ἐν ἧ σοι γραφῇ ἀπέστειλεν, ἀντιτιθέντων ἡμῶν τὰ οἰκεία λέγει σοι ὁ πάπας, καὶ εἰ σοι, πάντως καὶ ἡμῖν, ὡς καὶ εἰ ἡμῖν, πάντως καὶ σοι, κατασκευάζων τοῦτο διὰ γραφικῶν ἐπιχειρημάτων, ὡς ἀνάγκη μίαν εἶναι κεφαλὴν τῷ τῆς ἐκκλησίας πληρώματι, ἢ σώματι· καὶ οὐκ ἄλλην εἶναι ταύτην ἢ τὸν Πέτρον, καὶ δι’ αὐτοῦ, ἢ καὶ μετ’ αὐτόν, τὸν πάπαν τῆς Ῥώμης.

68 Ibid., 167: ἴδοι τις τοῦτο καὶ ἄλλως, εἰ καταλογίσαστο, ὡς αἱ πέντε τῶν ἐκκλησιῶν ἀρχαὶ, αἰσθήσεων λόγον ἐπέχουσιν ἐν τῷ τῆς ἐκκλησίας σώματι· εἰ δὲ πέντε εἰσὶν αἱ αἰσθήσεις, καὶ οὐ πλείους ἢ ἐλάττους, ἢ δὲ κεφαλὴ τῆς ἐκκλησίας ἡ Ῥώμη ἐστὶ, καὶ οὐχ’ ὁ Χριστὸς, ἀνάγκη τῶν δύο γενέσθαι τὸ ἐν· ἢ κολοβὸν εἶναι τὸ σῶμα, τὴν μίαν αἰσθησιν ἀπολέσαν, καὶ ἀντὶ τῶν πέντε τὰς τέσσαρας ἔχον· ἢ ἀλλὰ δότωσαν τῷ σώματι τὴν ἐτέραν, ἵν’ εἴη ὁλόκληρον.

69 RP 4:408–9: ὡς γὰρ τὸ σῶμα τὸ ἡμέτερον πέντε αἰσθήσεσιν οἰκονομεῖται, οὕτω καὶ τὸ τοῦ Χριστοῦ σῶμα, ἡ ἐκκλησία τῶν πιστῶν, ὡς ὑπὸ ε’ αἰσθήσεων, τῶν πέντε θρόνων οἰκονομεῖται.

70 This correspondence is known from replies sent to the pope by Alexios and Nicholas in late 1089, published in W. Holtzmann, “Die Unionsverhandlungen zwischen Kaiser Alexios I. und Papst Urban II. im Jahre 1089,” *BZ* 28 (1928): 60–64 (nos. 2–3). For a discussion of the negotiations in 1089 between Urban, Alexios, and the patriarchal synod, see Y. Spiteris, *La Critica bizantina del Primato romano nel secolo XII* (Rome, 1979), 25–37.

71 Theophylact of Ohrid, *Address to One of His Correspondents about Those Who Are Called Latins* 4–7 (P. Gautier, ed., *Theophylacte d’Achrida: Discours, Traités, Poésies* [Thessaloniki, 1980], 247–85): ἡξίωσας μὲν γὰρ ἡμᾶς ἀντειπεῖν διὰ βραχέων, ὡς οἶον τε, τοῖς τῶν Λατίνων περὶ τὰ ἐκκλησιαστικὰ σφάλμασι, πολλοῖς τε οὖσιν, ὡς ἔφησας, καὶ πρὸς τὸ σχῆζειν τὰ ἐκκλησίας οὐ μικρὰν ἰσχὺν ἔχουσιν.



Symeon, both in its rejection of Petrine primacy and in its assertion of the pentarchy as the basis of ecclesiastical jurisdiction. This connection was apparently not lost on contemporary Byzantines. The source for Walther Holtzmann's edition of the correspondence of 1089 was a twelfth-century manuscript fragment bound into a fifteenth-century canon law codex that can today be found in the British Library.<sup>72</sup> In the folios preceding Nicholas's letter to Urban in the manuscript fragment, we find the full, unabbreviated texts of Demetrios of Kyzikos on the Jacobites, Peter III's letter to Domenicus of Grado, and Leo of Ohrid's letters on the azyma—three of the main anti-heretical and anti-Roman items in the appendix to the *Synopsis*.<sup>73</sup> Unfortunately, the fragmentary state of this section of the manuscript prevents us from drawing any firm conclusions, but it is surely no coincidence that these texts appear so close to those of the church union correspondence.

We should note that there was a second effort to negotiate church union during the reign of Alexios. In 1112 the emperor reached out to Pope Paschal II (1099–1118), who sent a legation to Constantinople led by Archbishop Peter Grossolanus of Milan (1102–1112).<sup>74</sup> Might the anti-Roman texts be associated with this incident instead? The answer is probably not: unlike Urban, Paschal said nothing about St. Peter, instead basing his arguments for papal primacy entirely on the fraudulent Donation of Constantine (which Urban had not mentioned)<sup>75</sup>—a subject that does not feature at all in the appendix.

Therefore, given the prominence of the Petrine primacy and the theory of the pentarchy in the anti-Roman texts of Group 3 (as well as the witness of the

manuscript Add. 34060), it is most likely that they were added to the appendix as a consequence of the abortive union negotiations of 1089. This date also fits well with the revision of the N14T ca. 1090 and with Alexios's reform edict of 1092.

## Significance and Impact

The appendix to the *versio aristenica* of the *Synopsis of Canons* thus appears to be a draft collection of texts—mostly in abbreviated form—produced in the reign of Alexios Komnenos, likely in the 1080s to 1090s. It represents an unfinished, intermediate stage of composition in the development of the *Synopsis of Canons* that has been preserved in the early manuscripts of Aristenos's commentary. It may have been the work of a single redactor, though it is also possible that it was compiled incrementally over time by more than one person. The appendix was a response to a contemporary desire to use canon law to define and enforce the boundaries of orthodoxy in Komnenian Byzantium.<sup>76</sup>

The practice of adding appendixes to canon law collections was not unique to the Komnenian era, of course. Most Byzantine civil and canon law manuscripts contain appendixes of supplementary texts; it is more surprising to find a nomocanon without an appendix than with one. Unlike in the medieval West, where popes continued to issue new decretals and conciliar canons, the Byzantines did not add to their corpus of canon law after the ninth century: “At this point, the eastern ‘canon of the canons’ effectively closed,” in David Wagschal's words.<sup>77</sup> Instead, Byzantine canonists kept their manuscripts up-to-date by supplementing them with appendix texts that would help the reader reinterpret existing canon law in a way that addressed contemporary issues.

76 It is noteworthy that even though Alexios was one of the main driving forces behind this effort, it did not always serve the emperor's short-term goals. Alexios clearly wanted better relations with the papacy, but the pursuit of orthodoxy led Byzantine canonists to emphasize the incompatibility of Roman and Constantinopolitan ecclesiology.

77 D. Wagschal, “Orthodox Canon Law: The Byzantine Experience,” in *The Orthodox Christian World*, ed. A. Casiday (London, 2012), 387. Patriarchs did continue to issue decrees (such as Sisinnios II's decree in 997 against the marriage of cousins), some of which would be added to canon law manuscripts, but these were not formally recognized as canons on par with those of the great church councils or patristic writings of antiquity.

72 London, British Library, MS Add. 34060, fols. 511–57, 563–79 (the correspondence is on fols. 569v–572v, 577r/v); Holtzmann, “Die Unionsverhandlungen.”

73 Add. 34060, fols. 534r–536r, 536v–541r, 548v–557v.

74 See J. Darrouzès, “Les documents byzantins du XII<sup>e</sup> siècle sur la primauté romaine,” *REB* 23 (1965): 51–59. Needless to say, the negotiations failed once again, as the Byzantines were unable to accept papal claims of primacy.

75 *Fontes III*, 1:796–98 (no. 383). Spiteris remarks (*La Critica bizantina*, 66): “Evidently in Rome they understood that the Greeks did not particularly appreciate the argument from apostolicity, so the papal chancery tried to use arguments that could strike more at Byzantine sensibilities.” On the use of the Donation of Constantine in Byzantine ecclesiology, see D. Angelov, “The Donation of Constantine and the Church in Late Byzantium,” in *Church and Society in Late Byzantium*, ed. idem (Kalamazoo, MI, 2009), 91–157.

Heresy and schism had of course been common themes in the appendixes of Byzantine nomocanons long before the reign of Alexios Komnenos. One typical pre-Komnenian arrangement was a cluster of excerpts from John of Damascus's *On Heresies*, Sophronios of Jerusalem's *Encyclical Letter* to Sergios I of Constantinople, and Timothy of Constantinople's *On the Reception of Heretics* and *On the Schismatics Who Are Called Hesitators*, all of which were originally composed in the seventh and eighth centuries. These appear in various combinations in surviving manuscripts, sometimes accompanied by later texts such as the ninth-century *On Those Who Slander Christians* of Nikephoros I the Confessor (806–815) and the *Rule on the Reception of Heretics* of Methodios I of Constantinople (843–847).<sup>78</sup>

These texts continued to appear in manuscripts as late as the thirteenth century, but they had already become dated by the eleventh. The innovation of the redactor(s) of the appendix to the *Synopsis of Canons* was to incorporate newer texts from the 1020s to 1050s. They realized the need for more modern interpretive material to address such topics as the Bogomils and the Roman primacy, so they sought out recent texts of acceptable pedigree and abbreviated them to match the format of the rest of the *Synopsis*. In other words, they undertook an act of scholarly research and composition.

Alexios's program of reform for the Byzantine church placed a heavy emphasis on education and professionalization, with the deacons of the Great Church of Constantinople playing a leading role.<sup>79</sup> The educated deacons of the patriarchate came to monopolize

the practice and study of canon law in the late eleventh and twelfth centuries (and were even prominent in the realm of civil law).<sup>80</sup> Most of the leading canonists of this period, including Alexios Aristenos and Theodore Balsamon, were deacons of the Great Church at some point in their careers. It may well have been one or more of this class of educated deacons who produced the appendix.

Although the texts appear unfinished, they are evidence for the intellectual activity of canonists at the end of the eleventh century, activity that would guide the interpretive work of later Byzantine legal scholars. In some cases, we can see that the appendix directly influenced later writers. For instance, the fourteenth-century jurist Constantine Harmenopoulos (ca. 1320–1385) quotes the appendix's description of the Massalians almost verbatim in his short catalog *On Heresies*. Compare the original synodal decree of Alexios Stoudites with the appendix to the *Synopsis* and the opening lines of Harmenopoulos's entry:

*Stoudites*: From this [comes] . . . the foul and disgusting heresy of the Manichaeans, of which the evil-believing deceit of the Massalians is a most wretched descendant, dividing those who are held captive by it from God in everything, not only because it does the same things as the Manichaean godlessness, but also because it devised other, fouler things in addition to these. For [they say] that the soul of men is held captive by Satan and his angels, and that [men's] nature is shared in common with the spirits of evil.<sup>81</sup>

*Appendix*: The Massalians suffer from the disease of the Manichaeans, but they also devised fouler [things]. For they speak nonsense about the soul of men being held captive by the demons.<sup>82</sup>

78 The number of manuscripts with some configuration of these texts is substantial. Examples include Jerusalem, Παναγίου Τάφου, MS 24, fols. 328v–355r (tenth century); Turin, Biblioteca Nazionale Universitaria, MS B II 26, fols. 414r–431v (tenth century); Moscow, Gosudarstvennii Istoricheskij Muzej, MSS Sin. gr. 398, fols. 184r–239v (tenth century), and Sin. gr. 467, fols. 162r–171v (1040/41); Mount Athos, Μονή Κουτλουμουσίου, MS 42, fols. 310v–332v (eleventh century); Florence, Biblioteca Laurenziana, MS plut. 9.8, fols. 248v–289v (twelfth century); Vatican City, Biblioteca Apostolica Vaticana, MS Vat. gr. 2184, fols. 265v–286v (twelfth/thirteenth century); and Mount Athos, Μονή Παντοκράτορος, MS 234, fols. 434v–444r (twelfth/thirteenth century).

79 P. Magdalino, "Enlightenment and Repression in Twelfth-Century Byzantium: The Evidence of the Canonists," in *Byzantium in the Twelfth Century: Canon Law, State and Society*, ed. N. Oikonomides (Athens, 1991), 358, refers to Alexios's reform edict as "an intellectual's charter." On the role of deacons in education and professionalization, see Tiftixoglu, "Gruppenbildungen" (n. 3 above), 33–53.

80 Tiftixoglu, "Gruppenbildungen," 35.

81 Gouillard, "Quatre procès" (n. 46 above), 44–45: ἐντεῦθεν . . . ἡ τῶν Μανιχαίων μιὰρὰ καὶ βδελυρὰ αἵρεσις, ἥς πονηρότατον ἔκγονον καὶ ἡ τῶν Μασσαλιανῶν κακὸ δόξος πλάνη, πάντῃ χωρίζουσα Θεοῦ τοὺς ταύτη κατεχομένους, οὐ μόνον ὅτι καὶ τῆς μανιχαϊκῆς ἀθεΐας τούτους μετόχους ποιεῖ, ἀλλ' ὅτι καὶ προσεξεῦρε τούτοις καὶ ἕτερα μιαιρότερα· τὸν τε γὰρ νοῦν τῶν ἀνθρώπων κατέχεσθαι παρὰ τοῦ Σατανᾶ καὶ τῶν ἀγγέλων αὐτοῦ, καὶ τὴν φύσιν τούτων κοινωνικὴν εἶναι τῶν πνευμάτων τῆς πονηρίας.

82 RP 4:408: οἱ Μασσαλιανοὶ τὰ τῶν Μανιχαίων νοσοῦντες, ἐξεύρον καὶ ἄλλα μιαιρότερα. φλυαροῦσι γὰρ τὸν νοῦν ἀνθρώπων ὑπὸ τῶν δαιμόνων κατέχεσθαι.

*Harmenopoulos*: The Massalians suffer from the disease of the Manichaeans, but they also devised fouler things besides. For they say that the soul of men is held captive by the demons.<sup>83</sup>

Harmenopoulos does add some more details of his own, but the appendix version was clearly his model, as the abbreviator's vocabulary and sentence structures are echoed consistently throughout the passage. Harmenopoulos no doubt encountered it in a manuscript of Alexios Aristenos's commentary on the *Synopsis of Canons*, which was widely available in the fourteenth century.

In most cases, though, the appendix's significance is more visible in the influence of the ideas that it promoted rather than in the specific words that it used. For example, "To those who say" argues that "the second council declared that Rome should take precedence because it was honored by the empire, not because of the princes [of the Apostles] Peter and Paul."<sup>84</sup> The idea that precedence is based on imperial rank recurs in Alexios Aristenos's comment on Chalcedon canon 28, while Neilos Doxapatres' treatise *Order of the Patriarchal Thrones* (1143/44) asserts that "those fools who say that Rome was honored because of Saint Peter are refuted. For look, this canon of the holy synod [Chalcedon canon 28] clearly says that Rome has its privilege because it is an imperial city."<sup>85</sup> "To those who say" likewise remarks that the Council of Chalcedon made Rome's primacy moot by placing Constantinople above all other sees, an (inaccurate)

idea that also appears in Doxapatres' work as well as in the *Alexiad*.<sup>86</sup>

Another interesting similarity can be found in John Zonaras's comment on Sardica canon 5, which makes an argument strikingly reminiscent to the one found in "To those who say":<sup>87</sup>

From this canon, the archbishops of Old Rome boast that it is granted to them to have all the judicial appeals of bishops referred to them, falsely saying that this is a canon of the First Ecumenical Council of Nicaea. This was proposed in the first council convened in Carthage, but was shown to be untrue, as the text before the canons of the same council shows.<sup>88</sup> So, this canon is not from the Council of Nicaea, nor does it refer all judicial appeals of bishops to him, but only of those who are subject to him. At the time, nearly all the western churches were subject to the church of Rome (that is, those of Thessaly, Illyria, Hellas, the Peloponnese, and of what is called Epirus, which were later placed under Constantinople); therefore, all their judicial appeals went to him.<sup>89</sup>

83 RP 5:451: οἱ Μασαλιανοὶ τὰ τῶν Μανιχαίων νοσοῦντες, προσεξεύρουν καὶ ἄλλ' ἅττα μαιώτερα. τὸν γὰρ νοῦν ἀνθρώπων ὑπὸ τῶν δαιμόνων κατέχεσθαι λέγουσι.

84 RP 4:411: ἡ δὲ Δευτέρα σύνοδος διὰ τὸ βασιλείᾳ τὴν Ῥώμην λαμπρυνθῆναι προὔχεν ἀποφνημαμένη, οὐ διὰ τοὺς κορυφαίους Πέτρον καὶ Παῦλον.

85 Neilos Doxapatres, *Order of the Patriarchal Thrones* 199 (G. Parthey, ed., *Hieroclis Synecdemos et notitiae graecae episcopatum: Accedunt Nili Doxapatri Notitia Patriarchatum et locorum nomina immutata*, 2nd ed. [Amsterdam, 1967], 265–308, at 289): ὁρᾷς ὅπως ἀπὸ τοῦ παρόντος κανόνος προφανῶς ἐλέγχονται ληροῦντες οἱ λέγοντες προτιμηθῆναι τὴν Ῥώμην διὰ τὸν ἅγιον Πέτρον. ἰδοὺ γὰρ προφανῶς ὁ κανὼν οὗτος τῆς ἁγίας συνόδου φησὶ διὰ τὸ εἶναι τὴν Ῥώμην βασιλίσσαν ἔχειν τὴν προτίμησιν. See also J. Morton, "A Byzantine Canon Law Scholar in Norman Sicily: Revisiting Neilos Doxapatres' Order of the Patriarchal Thrones," *Speculum* 92:3 (2017): 740–41. Aristenos: Papagianni et al., *Kommentar* (n. 10 above), 95.

86 RP 4:412; Doxapatres, *Order* 196 (Parthey, *Hieroclis Synecdemos et notitiae graecae episcopatum*, 287–88); Anna Komnene, *Alexiad* 1.13.4.

87 The similarity was first noted by Gordillo, "Photius et Primatus Romanus" (n. 61 above), 36. Believing that "To those who say" was a work of the early thirteenth century, Gordillo suggested that Zonaras might have been a source for the ideas in the anonymous work. Given the relative dating of the texts, though, it was more likely "To those who say" that influenced Zonaras.

88 The canons in the Greek text of the Council of Carthage (419) are preceded by an account of a discussion between the bishops in the council and Bishop Faustinus of Potentia, a papal legate. Faustinus had received a letter from Pope Boniface I (418–422) that quoted Sardica canon 5 but wrongly claimed it as a canon of Nicaea I. The bishops assembled at Carthage did not recognize the canon and pointed out that they could not find it in the acts of Nicaea I (RP 3:289–90).

89 RP 3:241: ἐκ τούτου τοῦ κανόνος οἱ τῆς πρεσβυτέρας Ῥώμης ἀρχιερεῖς αὐχοῦσιν ἐνδεδῶσθαι αὐτοῖς τὰς ἐκκλησίους πάσας τῶν ἐπισκόπων πρὸς αὐτοὺς ἀναφέρεσθαι, τῆς πρώτης οἰκουμένης συνόδου τῆς ἐν Νικαίᾳ τούτων εἶναι τὸν κανόνα ψευδῶς λέγοντες· ὅπερ ἐν τῇ κατὰ τὴν Καρθάγεναν ἀθροισθείσῃ συνόδῳ προτεθὲν, ἠλέγχθη μὴ ἀληθεῖν, ὡς ἡ πρὸ τῶν κανόνων τῆς αὐτῆς συνόδου γραφὴ παριστᾷ. οὔτε οὖν τῆς ἐν Νικαίᾳ συνόδου ἐστὶν ὁ κανὼν, οὔτε πάσας τὰς ἐκκλησίους τῶν ἐπισκόπων ἀνατίθῃσιν αὐτῷ, ἀλλὰ τῶν ὑποκειμένων αὐτῷ. ὑπέκειντο δὲ τότε τῇ Ῥωμαίων ἐκκλησίᾳ αἱ δυτικαὶ πάσαι σχεδὸν ἐκκλησίαι, αἱ Μακεδονικαὶ δηλαδὴ, αἱ Θεταλικάι, αἱ τοῦ Ἰλλυρικοῦ, αἱ τῆς Ἑλλάδος, καὶ τῆς τοῦ Πέλοπος, καὶ αἱ τῆς λεγομένης Ἠπείρου, αἵτινες ὕστερον τῷ

In the same vein, the anonymous author of “To those who say” points out that the Council of Carthage “not only did not pay any respect to the Council of Sardica, but it did not even think it was important enough to know of its existence.”<sup>90</sup> The tract goes on to mention a “Council in Benethala” that specifically ordered that only bishops under the Roman pope should be subject to his synodal decisions, those under Alexandria should be subject to their own archbishop, “and the others likewise.”<sup>91</sup> Again, the appendix text clearly foreshadows Zonaras’s interpretation some seventy years later.

None of this is to say that the appendix to the *Synopsis of Canons* was a widely read text that directly influenced a broad range of future writers, though it did influence some. Legal manuscripts filled a technical niche and never constituted popular reading material. Rather, it is significant because it bears witness to the ideas of the legal professionals in the Church of Constantinople under the reign of Alexios Komnenos, ideas that would go on to inform the well-known canonists of the twelfth century. It therefore represents an often-overlooked stage in the intellectual history of

Byzantine canon law and in the shaping of legal attitudes toward orthodoxy and ecclesiology.



Since it was first published by Beveridge in the seventeenth century, the appendix to the *Synopsis of Canons* has been treated as a perplexing curiosity. With the recent exception of Menevisoglou, Byzantine legal historians have largely overlooked it. At first glance, the selection of texts in the appendix does not appear to have any clear rationale and it is hard to understand why they have been transmitted alongside Alexios Aristenos’s polished canonical commentary. However, when we examine them more closely and view them in the context of the textual development of the *Synopsis of Canons*, we can see that the appendix is, in fact, a perfectly comprehensible product of late eleventh-century Byzantine legal scholarship.

The reign of Alexios Komnenos saw a renewed interest in the systematization of canon law in the pursuit of church reform, all under the watchful eye of the imperial *epistemonarches*. This interest manifested itself in two main ways. First, ca. 1090 the officials Theodore the Bestes and Michael the Sebastos produced an expanded version of the N14T (the most popular textual collection of Byzantine canon law) that included references to the *Basilika*. Second, in 1092 Alexios himself issued a decree mandating better education among the clergy and stricter observance of the canon law corpus. Although it is impossible to date the compilation of the appendix precisely, its contents are clearly associated with this historical moment.

Many of the texts appear to be preparatory drafts aiming to help align the *Synopsis of Canons* (then mainly known in its *Synopsis II* form) with the contents of the N14T. Texts 1–23 are synopses of sections of the N14T that could not be found in the *Synopsis of Canons*. Texts 27–32 are a response to the emperor’s concern to guard the orthodoxy of the Byzantine church and defend the faithful from the threat of heresy and schism. Numbers 27–29 address the main heresies that seemed to menace Constantinople in the mid-1080s: the Nestorianism of Neilos of Calabria, the Monophysitism of the Armenians and Syrians, and the dualism of the Enthusiasts and the Bogomils. Numbers 30–32 provided a critical answer to Urban II’s assertion of papal primacy in his correspondence of 1089.

Κωνσταντινουπόλεως ὑπετέθησαν, ὡς ἐκεῖνω λοιπὸν, καὶ τὰς ἐκκλησίους αὐτῶν ἀνήκειν.

90 RP 4:413: ἡ ἐν Καρθαγένῃ σύνοδος . . . οὐ μόνον οὐδὲν αἰδέσιμον ἀπένειμε τῇ ἐν Σαρδικῇ, ἀλλ’ οὐδ’ ὅτι γέγονεν εἰδέναι ἡξίωσεν.

91 RP 4:413: ἡ ἐν Βενεθάλοις σύνοδος πάλιν τοῖς τῆς πρώτης ἐξακολουθήσασα κανόνι, τοὺς μὲν ὑπὸ τὸν Ῥώμης ἐπισκόπους ταῖς ἐκεῖνων συνοδικαῖς ψήφοις ὑπέκειν ἐκέλευσε, τοὺς δὲ ὑπὸ τὸν Ἀλεξανδρείας, τοῦ σφῶν ἀρχιερέως, καὶ τοὺς ἄλλους ὁμοίως. The identification of this “council in Benethala” is problematic. It is mentioned in a rescript of Patriarch Arsenios Autoreianos (1255–1259, 1261–1265) on ordinations (RP 5:549, line 20). This text was later excerpted in the seventeenth-century *Legal Collection* of Patriarch Dositheos II of Jerusalem (1669–1707), where a marginal note reads: “I do not know which is the Council in Benethala, unless it means the one in Sardica [or] [canon] 36 of Carthage” (quoted in D. G. Apostolopoulos and P. D. Michailares, *Η νομική συναγωγή του Δοσιθέου: Μια πηγή και ένα τεκμήριο* [Athens, 1987], 125 [no. 80]: οὐκ οἶδα τίς ἡ ἐν Βενεθάλοις ἁγία σύνοδος, εἰμὶ τίς ἐρεῖ τὴν ἐν Σαρδικῇ· τῆς ἐν Καρθαγένῃ λς’). Despite this uncertainty, Dositheos cites “the Council in Benethalia” [*sic*] to refute the Roman pope’s claim to universal jurisdiction; see his *History of the Patriarchs of Jerusalem* (E. Deledemos, ed., *Δοσιθέου Πατριάρχου Ἱεροσολύμων Ἱστορία περὶ τῶν ἐν Ἱεροσολύμοις Πατριαρχευσάντων, ἄλλως καλουμένη Δωδεκάβιβλος Δοσιθέου*, 6 vols. [Thessaloniki, 1982–83], 2:4.421). As a scholar of canon law, Dositheos may have come across the reference in the appendix to the *Synopsis of Canons*. As for Benethala itself, it may be the same as the “Bainethale” mentioned as a suffragan bishopric of Emesa in Syria in H. Gelzer, “Ungedruckte und wenig bekannte Bistümerverzeichnisse der orientalischen Kirche,” *BZ* (1892): 264.



The redactor(s) of the appendix realized that the established Byzantine canonical corpus did not address contemporary heretics like the Bogomils, while its stance on patriarchal jurisdiction and papal primacy was arguable to say the least. Their answer was to incorporate more recent texts from the patriarchates of Alexios Stoudites and Michael Keroularios to clarify these points. The texts gave clear definitions of Nestorians, Jacobites, and Chatzitzarioi (along with their errors), while they also established that the Enthusiasts/Bogomils were really the same as the ancient Massalians. Furthermore, the texts countered the papacy's claims to universal jurisdiction by presenting the Byzantine theory of the pentarchy and explaining away potentially problematic canons like those of the Council of Sardica.

For whatever reason, this collection of draft texts was never fully integrated into the *Synopsis of Canons*, at least as far as we can tell from surviving manuscripts.

Yet, thanks to the vagaries of medieval scribal production, it has been fossilized and transmitted in copies of Alexios Aristenos's commentary. The appendix thus gives an insight, however brief, into the dynamics of canon law systematization and the development of legal interpretation in the closing years of the eleventh century. While it may seem inconsequential when compared to the much longer legal commentaries of Aristenos, Zonaras, and Balsamon, it is evidence for an earlier phase of scholarship that underpinned and informed their more sophisticated work.

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